

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HARVEY HUNEMULLER,

Claimant,

vs.

WEITZ CONSTRUCTION  
COMPANY, INC.,

Employer,

and

SENTINEL INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 5064471

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1802; 1803; 2401;  
2501; 2907; 4000; 5-9998

Claimant Harvey Hunemuller appeals from an arbitration decision filed on December 9, 2019. Defendants Weitz Construction Company, Inc., employer, and its insurer, Sentinel Insurance Company, respond to the appeal. The case was heard on August 13, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 30, 2019.

The deputy commissioner found claimant met his burden of proof to establish he sustained a low back injury, which arose out of and in the course of his employment with the defendant-employer on April 16, 2018. However, the deputy commissioner found claimant failed to meet his burden of proof to establish the work injury resulted in temporary or permanent disability. In this respect, the deputy commissioner found claimant suffered a temporary exacerbation of a pre-existing condition. As such, the deputy commissioner found all other issues relating to claimant's low back condition were moot, including whether claimant is entitled to receive medical benefits, alternate medical care, and penalty benefits. Lastly, the deputy commissioner found defendants failed to establish the affirmative defense of lack of timely notice under Iowa Code section 85.23. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove his low back condition and need for surgical intervention was causally related to the April 16, 2018, work injury. Claimant further asserts the deputy commissioner erred in finding claimant failed to prove the April 16, 2018, work injury

resulted in temporary and permanent disability. In this regard, claimant also asserts defendant-employer failed to establish the affirmative defense of lack of timely notice under Iowa Code section 85.23. Lastly, claimant asserts entitlement to alternate medical care, reimbursement for medical expenses, penalty benefits, and costs.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on December 9, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant failed to prove the work-related incident on April 16, 2018, is the proximate cause of his low back condition and need for surgical intervention. I affirm the deputy commissioner's finding claimant failed to prove he sustained temporary or permanent disability as a result of the April 16, 2018, injury. I affirm the deputy commissioner's finding that defendants failed to establish the affirmative defense of lack of timely notice under Iowa Code section 85.23. Given the deputy commissioner's findings regarding causation, I affirm the deputy commissioner's finding that all other issues are moot.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. Claimant asserts the deputy commissioner erred in finding claimant did not present as a credible witness. While the deputy commissioner only expressly discussed two examples in the conclusions of law section, the deputy commissioner addressed several inconsistencies throughout the arbitration decision. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. I provide the following additional analysis for my decision:

In the arbitration decision, the deputy commissioner rejected the causation opinion of John Kuhnlein, M.D., because it was "based upon the information claimant provided him," which the deputy commissioner did not find credible. (Arbitration Decision, page 14) While I ultimately agree with the deputy commissioner's decision to

reject the expert opinion of Dr. Kuhnlein, additional analysis is needed regarding that opinion.

When claimant presented for his independent medical examination (IME) on October 3, 2018, he told Dr. Kuhnlein that the alleged April 16, 2018, incident produced new left lower extremity symptoms that he had not previously experienced. (Ex. 1, pp. 6-7) ("now with symptoms radiating down the left leg below the knee to the foot.") Dr. Kuhnlein's report provides, "Even in the context of the pre-existing low back pain, Mr. Hunemuller developed new leg symptoms and increased low back pain in the same location but with increased intensity with this incident." (Ex. 1, p. 7) In his appeal brief, claimant similarly asserts his physical symptoms changed dramatically after the alleged work injury. (Claimant's Appeal Brief, page 15)

Unfortunately, these statements are not supported by the evidentiary record. Contemporaneous medical records support a finding that claimant's symptoms worsened "over the past 7-8 months," and "9 months prior" to the date of injury, and included pain in the bilateral lower extremities. The evidentiary record does not support a finding that claimant's symptoms significantly worsened on April 16, 2018, as asserted by claimant.

Claimant presented to Barbara Heck, ARNP on April 17, 2018, one day after the alleged injury. (JE3, p. 1) There is no evidence claimant reported a work-related injury to Ms. Heck. Instead, the medical record provides claimant presented with complaints of worsening low back pain that had been present for years. (Id.) It is noted the pain sometimes radiated into claimant's lower extremities. (See JE3, p. 1)

Claimant presented to Troy Munson, M.D. on May 3, 2018. (JE4, pp. 1-2) There is no evidence claimant reported a work-related injury to Dr. Munson. Instead, the medical record provides claimant reported low back pain that had been present for a number of years, but had been "especially worse the last 2 years." (JE4, p. 1; See JE4, p. 15) The record further provides claimant's low back pain began radiating down both of his legs approximately 9 months prior to the May 3, 2018, appointment. (Id.)

Claimant presented to Erin Swenka, D.O. for a preoperative evaluation on May 21, 2018. (JE3, pp. 6-9) He complained of low back pain, with radiating pain down both of his legs. (JE3, p. 6) There is no evidence claimant reported a work-related injury, or a recent, significant increase in symptoms. Rather, the May 21, 2018, medical record provides claimant had experienced back pain for many years. It is also noted that claimant's pain had progressively worsened over the past seven to eight months. (JE3, p. 6)

Claimant asserts Dr. Ethan Kleckner's chiropractic records, which pre-date the date of injury, support a finding that the low back condition dramatically changed on or about April 16, 2018. I do not find this argument to be persuasive. While it is true that Dr. Kleckner consistently diagnosed claimant with sciatica on the left side only, the "History of present illness/condition" section of Dr. Kleckner's medical records are

substantially similar to the medical records of Ms. Heck, Dr. Munson, and Dr. Swenka, and support a finding that claimant's low back condition worsened months before April 16, 2018. (See JE2, pp. 4, 7, 10, 13, 16, 19, 22, 25) The chiropractic records between January and March 2018 provide, "The symptoms have been more frequent over the last year[.]" "The patient describes their pain with the following qualifiers: [...] radiating and burning[.]" "Lbp left and right pss left worse with lateral leg ache to knee past year worse past several weeks[.]" and "May need Ortho visit." (See JE2, pp. 4, 7, 10, 13, 16, 19, 22, 25)

With this additional analysis, I affirm the deputy commissioner's finding that claimant failed to prove the events that occurred on April 16, 2018, materially aggravated, accelerated, or lit up his pre-existing low back condition.

ORDER

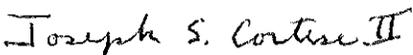
IT IS THEREFORE ORDERED that the arbitration decision filed on December 9, 2019, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 20<sup>th</sup> day of July, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Nick Platt (via WCES)

Timothy Wegman (via WCES)